

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

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Date:

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### Legend

Distributing =

Controlled =

LP =

Sub =

LLC 1 =

LLC 2 =

State A =

State B =

Business A =

Business B =

Distributing  
Notes =

Date 1 =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to your June 7, 2013 request for rulings regarding certain federal income tax consequences of certain proposed transactions. The information provided in that request and in later correspondence is summarized below.

The rulings in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support

of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of any distributing corporation or any controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); and (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and § 1.355-7).

### FACTS

Distributing, a publicly-traded State A corporation with a single class of stock outstanding, is the common parent of an affiliated group of corporations that files a consolidated U.S. federal income tax return using the accrual method of accounting.

Distributing directly owns a common and class B limited partner units of LP, a publicly-traded State B partnership engaged in Business A. Distributing also owns through LLC 1, a State B limited liability company that is disregarded as an entity separate from Distributing for federal income tax purposes (a “disregarded entity”), b limited partner units and all of the general partner interests in LP. Together, this represents c percent of the outstanding LP partnership interests. Distributing also wholly owns all the stock of Sub.

LP does not have employees. Rather, in its capacity as general partner and pursuant to a services agreement entered into with LP, LLC 1 is responsible for managing and operating all aspects of Business A. In this regard, certain members of Distributing’s management also serve as officers of LLC 1 and provide managerial oversight with respect to Business A. All other employees associated with and engaged in Business A are employed by Distributing and Sub.

Business B is conducted by Distributing and members of its separate affiliated group (as defined in section 355(b)(3)(B)) (the “Distributing SAG”).

Financial information that has been submitted indicates that Business A and Business B, as currently conducted, each have had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past 5 years.

Distributing has outstanding obligations to unrelated creditors (the “Distributing Notes”) and short-term commercial paper, and has available a revolving line of credit under a credit facility as a backstop to its commercial paper program (together, the “Distributing Debt”). None of the Distributing Notes were issued in anticipation of, or in connection

with the proposed transaction. Prior to completing the proposed transaction, Distributing will not issue commercial paper or borrow under the credit facility except in the ordinary course of business consistent with past practice.

### PROPOSED TRANSACTIONS

For what are represented to be valid business purposes, Distributing proposes the following steps, which have been partially consummated (together the “Proposed Transactions”):

- (i) On Date 1, Distributing formed Controlled with one authorized class of stock and a nominal amount of capital.
- (ii) Prior to the consummation of Steps (vi) and (vii) as defined below, Controlled may enter into an interest rate hedge (the “Interest Rate Hedge”) with a third-party investment bank (the “Investment Bank”). Distributing will guarantee Controlled’s obligations under the Interest Rate Hedge until the Contribution (as defined in Step (vi), below) has occurred. The Interest Rate Hedge is in the nature of a derivative contract under which Controlled will be required to make payments to the Investment Bank if interest rates decrease and the Investment Bank will be required to make payments to Controlled if interest rates increase. Distributing intends to treat itself, rather than Controlled, as the initial counterparty to the Interest Rate Hedge. Distributing will then treat Controlled as receiving or assuming Distributing’s rights and obligations, as the case may be, under the Interest Rate Hedge for Federal income tax purposes pursuant to the Contribution.
- (iii) At least d days prior to the closing date of the Debt Exchange (as defined in Step (iv) below), the Investment Bank acting as principal for its own account will acquire Distributing Notes in the secondary market (the “Distributing Exchange Debt”).
- (iv) Not less than e calendar days following Investment Bank’s acquisition of the Distributing Exchange Debt, Distributing and Investment Bank expect to enter into the Exchange Agreement, pursuant to which the Investment Bank will agree to exchange an amount of Distributing Exchange Debt, to be determined by the parties bargaining at arms-length, for the Controlled Securities to be received by Distributing in Step (vi) below (the “Debt Exchange”).
- (v) Sub will convert under state law into a limited liability company and will be treated as a disregarded entity (“LLC 2”). Business B employees that are employed by Distributing and LLC 2 will become employed by Controlled (and/or one or more entities disregarded from Controlled) pursuant to the Contribution.

- (vi) Distributing will contribute all of the assets and liabilities related to Business B and the rights and obligations under the Interest Rate Hedge to Controlled in exchange for (i) all of the Controlled stock, (ii) debt securities of Controlled (the “Controlled Securities”), and (iii) all or a portion of the Controlled Borrowing Proceeds (defined in Step (vii) below) (together, the “Contribution”).
- (vii) Controlled will borrow cash from third-party lenders through capital market borrowings (the “Controlled Borrowing Proceeds”). Controlled will transfer to Distributing all or a portion of the Controlled Borrowing Proceeds in partial exchange for the Business B assets received from Distributing pursuant to the Contribution. Distributing will deposit the Controlled Borrowing Proceeds into a segregated account until paid out as described in Step (viii) below.
- (viii) Within f months of receiving the Controlled Borrowing Proceeds, Distributing will use such proceeds to (i) repay Distributing Debt, (ii) repurchase outstanding shares of Distributing stock, and/or (iii) pay dividends with respect to Distributing stock.
- (ix) No sooner than d days after Step (iii) above, as provided for in the Exchange Agreement, Distributing and the Investment Bank will consummate the Debt Exchange, pursuant to which Distributing will transfer all of the Controlled Securities received by it in the Contribution to the Investment Bank in exchange for the Distributing Exchange Debt. The Investment Bank expects to immediately thereafter sell the Controlled Securities to third-party investors.
- (x) Distributing will distribute all of the Controlled stock pro rata to its shareholders (the “Distribution”).

The transfer of certain Business B assets and contractual relationships (the “Delayed Assets”) may be delayed pending receipt of consents or approvals from unrelated parties. As soon as practicable after Distributing obtains the consent or approval necessary to transfer a particular Delayed Asset, Distributing will contribute that Delayed Asset to Controlled. While awaiting consents, Distributing and Controlled will enter into contractual arrangements that will provide Controlled with all substantial rights and obligations associated with the Delayed Assets.

Following the Distribution, Distributing anticipates that there will be g overlapping board members. None of these members will be involved in the day-to-day operations of Distributing or Controlled. In addition, in connection with the Proposed Transactions, Distributing and Controlled will enter into several agreements relating to their separation and certain continuing transactions between the companies (the “Post-Separation Agreements”), including a separation agreement, transitional services agreement, employee matters agreement, and a tax matters agreement.

## REPRESENTATIONS

- (a) With the exception of the Controlled Securities to be held by Distributing prior to the Debt Exchange, any indebtedness owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) No part of the consideration to be distributed by Distributing will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing.
- (d) Distributing will treat all members of the Distributing SAG as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (e) Distributing did not acquire Business A or control of any entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part, excluding: (i) acquisitions that: constitute expansions of Business A (within the meaning of § 1.355-3(b)(3)(ii)); and (ii) acquisitions from another member of the same affiliated group (as described in § 1.355-3(b)(4)(iii)).
- (f) Distributing did not acquire Business B or control of any entity conducting Business B during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part, excluding: (i) acquisitions that: constitute expansions of Business B (within the meaning of § 1.355-3(b)(3)(ii)); and (ii) acquisitions from another member of the same affiliated group (as described in § 1.355-3(b)(4)(iii)).
- (g) The 5 years of financial information submitted on behalf of Business A is representative of its present business operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) The 5 years of financial information submitted on behalf of Business B is representative of the business's present operation, and, with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (i) Following the Proposed Transactions and except as contemplated by the Post-Separation Agreements, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees.

- (j) The Distribution is being carried out for the following corporate business purposes: (i) to permit Distributing and Controlled to structure their operational, technical and cultural approaches to their businesses in a manner that is consistent with their “pure play” status, which could include a targeted focus on internal and external growth strategies relating to their own business operations; (ii) to enhance each of Distributing’s and Controlled’s ability to issue stock in pursuance of acquisition opportunities; and (iii) to allow each of Distributing and Controlled to incentivize its employees with targeted stock-based incentive plans. The Distribution is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (k) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (l) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing (including the Delayed Assets) will equal or exceed the sum of: (i) any liabilities assumed (within the meaning of section 357(d)) by Controlled plus any liabilities to which the transferred assets are subject (excluding liabilities to which section 357(c)(3) applies), and (ii) the total amount of cash and the fair market value of other property (within the meaning of section 361(b)) received by Distributing in the Contribution. For purposes of this representation, Distributing is treating the Interest Rate Hedge as a liability described in section 357(c)(3)(A) to the extent that, at the time of the Contribution, the present value of the payments that are anticipated to be received from the counterparty to the Interest Rate Hedge is less than the present value of the payments that are anticipated to be made to the counterparty to the Interest Rate Hedge.
- (m) The liabilities to be assumed (within the meaning of section 357(d)) by Controlled in the Contribution (if any) were incurred in the ordinary course of business and are associated with the assets being transferred.
- (n) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Proposed Transactions.
- (o) Distributing, Controlled, and the shareholders of Distributing will each pay their separate expenses, if any, incurred in connection with the Proposed Transactions.
- (p) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution, other than: (i) the Controlled Securities or (ii) indebtedness incurred in the ordinary course of business or pursuant to the Post-Separation Agreements.

- (q) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (See §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the Controlled stock, if any, will be included in income immediately before the Distribution (See § 1.1502-19).
- (r) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (s) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either: (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (t) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (u) Payments made in connection with continuing transactions between Distributing (and its subsidiaries) and Controlled following the Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, other than in connection with the Post-Separation Agreements.
- (v) No two parties to the Proposed Transactions are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (w) Immediately after the Distribution, either: (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled; (ii) neither Distributing nor Controlled will be a disqualified investment



corporation (within the meaning of section 355(g)(2)); or (iii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the Proposed Transactions.

- (x) After the Distribution, no officer or key employee of Distributing or any of its subsidiaries will also be an officer or key employee of Controlled. The board members who serve on the board of directors of both Distributing and Controlled after the Distribution will constitute a minority of each board of directors.
- (y) The Controlled Securities will qualify as securities within the meaning of section 361(a).
- (z) Any payment of cash in lieu of fractional shares of Controlled stock will be solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash that will be paid in connection with the Distribution in lieu of fractional shares of Controlled stock will not exceed one percent of the total consideration that will be distributed to holders of Distributing stock. It is intended that no Distributing shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled stock.
- (aa) The Distributing Debt was incurred by Distributing in the ordinary course of business, and the Distributing Notes were not incurred in connection with, or in anticipation of, the Contribution, the Distribution, or the Debt Exchange.

#### RULINGS

1. The Contribution together with the Distribution, will qualify as a reorganization within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of section 368(b).
2. Distributing's transfer of the Delayed Assets to Controlled will occur pursuant to the plan of reorganization that includes the Contribution and the Distribution. Section 1.368-2(g).
3. No gain or loss will be recognized by Distributing on the Contribution. Sections 357(a) and 361(a) and (b).
4. No gain or loss will be recognized by Controlled on the Contribution. Section 1032(a).

5. The basis in each asset received by Controlled in the Contribution will be the same as the basis of the asset in the hands of Distributing immediately before the Contribution. Section 362(b).
6. The holding period in each asset received by Controlled in the Contribution will include the period during which Distributing held such asset. Section 1223(2).
7. No gain or loss will be recognized by Distributing on the Distribution. Section 361(c).
8. No gain or loss will be recognized by (and no amount will be included in the income of) the shareholders of Distributing stock upon the Distribution. Section 355(a).
9. The aggregate basis of the Distributing stock and Controlled stock in the hands of each Distributing shareholder immediately after the Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will equal the basis of the Distributing stock held by such Distributing shareholder immediately before the Distribution, allocated in the manner described in § 1.358-2, in accordance with section 358(a) through (c).
10. The holding period of each Distributing shareholder in the Controlled stock received in the Distribution (including any fractional share interest in Controlled stock to which the shareholder may be entitled) will include the holding period of the Distributing stock with respect to which the Distribution is made, provided that such Distributing stock is held as a capital asset on the date of the Distribution. Section 1223(1).
11. A shareholder who receives cash in lieu of fractional shares of Controlled stock will recognize gain or loss measured by the difference between the basis of the fractional share received and the amount of cash received. Section 1001(a). Any gain (or loss) will be treated as capital gain (or loss), provided that such fractional shares are held as a capital assets on the date of the Distribution. Sections 1221 and 1222.
12. Earnings and profits of Distributing (if any) will be allocated between Distributing and Controlled in accordance with Section 312(h) and §§ 1.312-10(a) and 1.1502-33(e).
13. Distributing will recognize no gain or loss on its transfer of the Controlled Securities in the Debt Exchange other than any: (i) deductions attributable to the fact that Distributing Exchange Debt may be redeemed at a premium; (ii) income attributable to the fact that the Distributing Exchange Debt may be redeemed at a discount; and (iii) interest expense accrued with respect to the Distributing Exchange Debt. Section 361(c).

14. Payments made between Distributing or any of its affiliates and Controlled under the Post-Separation Agreements that (i) have arisen or will arise for a taxable period ending on or before the Distribution and (ii) will not become fixed and ascertainable until after the Distribution will be viewed as occurring immediately before the Distribution. Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84.

### CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

In particular, we express no opinion regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing, Controlled, or both (see section 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing or Controlled (see section 355(e) and § 1.355-7); (iv) whether the Interest Rate Hedge is a liability described in section 357(c)(3)(A); and (v) the Federal income tax treatment of payment for certain services that may be rendered at other than fair market value under the Post-Separation Agreements.

### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Mark J. Weiss  
Reviewing Attorney, Branch 6  
Office of Associate Chief Counsel (Corporate)